IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5692 OF 2016

Mycon Construction Limited,
A company incorporated and registered under the provisions of the Companies Act, 1956 having its office at Industry House, 45, Race Course Road,
Bangalore – 560 001. .... Petitioners

- Versus -

1. The Union of India
through the Secretary,
Ministry of Commerce,
Udyog Bhavan,
New Delhi-110 107.

2. The Director General of Foreign Trade,
Ministry of Commerce & Industry,
Department of Commerce, having his office at Directorate of Foreign Trade, Udyog Bhavan,
New Delhi 110 107.

3. The Additional Director General of Foreign Trade, Nishtha Bhavan,
New Marine Lines, Churchgate,
Mumbai-400 020.

4. The Zonal Jt. Director General of Foreign Trade, New C.G.O. Building,
New Marine Lines, Churchgate,
Mumbai-400 020.

5. The Deputy Director General of Foreign

Trade, 2nd Floor, Nishtha Bhavan,
New Marine Lines, Churchgate,
Mumbai-400 020. .... Respondents

Mr. Prakash Shah with Mr. Jas Sanghavi & Mr. Prasad Paranjpe i/by M/s. PDS Legal for the Petitioners.
Mr. Avinash J. Rana, Senior Counsel with Mr. Deepak Thakkar & Mr. Dushyant Kumar for the Respondents.

CORAM: S.C. DHARMADHIKARI &
B.P. COLABAWALLA, JJ.

DATE : FEBRUARY 27, 2017

ORAL JUDGMENT (Per Shri S.C. DHARMADHIKARI, J.)**:**

1. Rule. The respondents waive service. By consent, rule is made returnable forthwith and the petition is taken up for hearing and final disposal.

2. This writ petition under Article 226 of the Constitution of India seeks the following reliefs:-

> *"(A) Issue a Writ of Mandamus or a writ in the nature of Mandamus or any other appropriate writ, order or direction directing the Respondents to forthwith:*
>
> *(i) cancel and/or withdraw the impugned Show*

Cause Notice dated 29.06.2012

(ii) cancel and/or withdraw the impugned Demand Letter dated 31.05.2011

(B) Issue a Writ of Certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction calling for the papers pertaining to the Petitioners' case and after examining the legality and validity thereof, to quash and set aside the impugned:

(i) Show Cause Notice dated 29.06.2012

(ii) Demand Letter dated 31.05.2011

(C) To declare that:

(i) the impugned decision taken by the Policy Interpretation Committee in its Meeting No.10/AM-11 held on 15.03.2011 is ultra vires, null and void and of no effect,

(ii) the Petitioners are entitle to the deemed export benefit in respect of the projects undertaken by them and referred to above,"

3. The parties do not seriously dispute that the case at hand is similar to the one dealt with by this Court in ***Writ Petition Nos.6846 with 8288 of 2010 {Patel Engineering Ltd. Vs. Union of India}***, decided on 21-7-2014. The Judgment and Order in this case is reported in 2014 (309) E.L.T. 469 (Bom.).

4. It is contended that the show cause notice dated 29-6-2012 seeks from the petitioners an amount or proposes to recover a sum styled as refund.

5. Thereafter, the petitioners have challenged this action by pointing out that the denial of the deemed export benefit to the petitioners for their projects and the impugned show cause notice/letter seeking to recover the drawback already granted are *ex facie* without jurisdiction, illegal and void. Though Mr. Rana, learned Senior Counsel appearing on behalf of the respondents, contended that this writ petition is not maintainable but without prejudice he also contended that on merits the Revenue's stand, as reflected in the show cause notice and the letter which are impugned in the writ petition, is correct both on facts and law. After having invited his attention to the Division Bench Judgment in **Patel Engineering** (supra), he states that the Revenue has challenged this Judgment and Order in the higher Court. The proceedings are pending before the Hon'ble Supreme Court of India. Thus, both on the point of maintainability as also on merits the stand of the Revenue

though negatived by the Division Bench, Mr. Rana stands by the same.

6. After having heard Mr. Shah and Mr. Rana at some length, we are of the opinion that the issue raised in this petition is fully covered by the Division Bench Judgment of this Court in the case of Patel Engineering. Though the Revenue would submit that it has approached the Hon'ble Supreme Court of India challenging the same, nothing has been pointed out which would indicate that either the Judgment is quashed or set aside or no effect can be given to it in future cases. In such circumstances, we are bound by our Judgment delivered in Patel Engineering.

7. In view of the above, we allow this writ petition by relying on our said Judgment. Rule is, therefore, made absolute in terms of prayer clauses (a) and (b). There shall be no order as to costs.

(B.P. COLABAWALLA, J.) (S.C. DHARMADHIKARI, J.)